

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

PNC Mortgage, a division of PNC Bank)	C/A No. 4:10-1581-TLW-KDW
National Association,)	
)	
Plaintiff,)	
)	
vs.)	REPORT AND RECOMMENDATION
)	
Cheryl Powe,)	
)	
Defendant.)	
)	

Defendant Cheryl Powe, proceeding pro se, removed this foreclosure action from the Florence County, South Carolina Court of Common Pleas. *See* ECF No. 1. In an answer filed on July 6, 2010 and in an amended answer filed on August 4, 2010, Defendant asserted the following counterclaims against PNC: (1) falsely attempting to seize the property at issue (2) fraud; (3) punitive and compensatory damages; (4) litigation fees and costs; and (5) pain and suffering and emotional damages. ECF Nos. 8, 15.

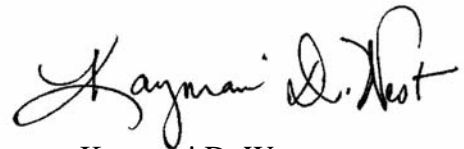
On May 25, 2012, Plaintiff moved to dismiss Defendant's counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 68.¹ As Defendant is proceeding pro se, the court entered an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), on May 30, 2012, advising her of the importance of a motion to dismiss and of the need for her to file an adequate response by July 5, 2012. ECF No. 70. Defendant was specifically advised that if she failed to respond adequately, Plaintiff's motion may be granted, thereby ending her counterclaims against Plaintiff.

¹ Defendant filed an action in Bankruptcy Court, which had stayed this matter in 2010. *See* ECF Nos. 20, 21. The stay was lifted on November 1, 2011, after the court was informed that the Bankruptcy Court had lifted the automatic stay. *See* ECF Nos. 37-39.

On July 10, 2012, the court ordered Defendant to advise whether she wished to pursue her counterclaims and to file a response to Plaintiff's Motion to Dismiss no later than July 24, 2012. ECF No. 73. Defendant has filed no response. As such, it appears to the court that she does not oppose the Motion and wishes to abandon her counterclaims. Based on the foregoing, the undersigned recommends that Plaintiff's Motion to Dismiss Defendant's Counterclaims, ECF No. 68, be GRANTED and that Defendant's counterclaims be dismissed with prejudice for failure to prosecute. *See Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(c).

IT IS SO RECOMMENDED.

August 17, 2012
Florence, South Carolina

A handwritten signature in black ink, appearing to read "Kaymani D. West". The signature is fluid and cursive, with the first name "Kaymani" being more prominent than the last name "West".

Kaymani D. West
United States Magistrate Judge

**The parties are directed to note the important information in the attached
"Notice of Right to File Objections to Report and Recommendation."**